

# **Exhibit 33**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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**BLACK LOVE RESISTS IN THE RUST, et al.,**  
**individually and on behalf of a class of**  
**all others similarly situated,**

Plaintiffs,

vs.

1:18-cv-00719-CCR

**CITY OF BUFFALO, N.Y., et al.,**

Defendants.  
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**ORAL EXAMINATION OF THOMAS WHELAN**

**APPEARING REMOTELY FROM**

**BUFFALO, NEW YORK**

Tuesday, April 26, 2022

9:00 a.m. - 5:53 p.m.

pursuant to notice

REPORTED BY:

Luanne K. Howe

APPEARING REMOTELY FROM CUYAHOGA COUNTY, OHIO

1 retirement?

2 A I was a lieutenant at the Strike Force Unit.

3 Q And did you work with a unit called Emergency  
4 Response Team?

5 A Yes. I was tasked with the forming of the Emergency  
6 Response Team.

7 Q And were you still working with the Emergency  
8 Response Team when you retired?

9 A When I was injured, yes.

10 Q Okay. And why did you leave the Buffalo Police  
11 Department?

12 A Because I had a career-ending injury on December 18,  
13 2016.

14 Q And what was your final salary when you left?

15 A My salary or what did I earn?

16 Q What did you earn? And I'm interested in your salary  
17 and the overtime.

18 A A police lieutenant's salary was I think around  
19 \$81,000 a year at the time, I think.

20 Q Okay. And do you know what you earned with overtime?

21 A My last year, I think I made 153,000.

22 Q So on top of the 81,000, was the remainder made  
23 through overtime?

1 A Overtime and court appearances.

2 Q Okay. So that's considered court compensation for  
3 appearing in court in addition to your regular hours?

4 A That's correct.

5 Q Okay. And what is the court overtime rate?

6 A I didn't understand the question. What is the court  
7 what?

8 Q What is the rate you were paid when you attend court?

9 A Court time is paid straight time for a minimum of  
10 four hours.

11 Q And how about overtime, what is the rate of overtime  
12 pay?

13 A One and a half times.

14 Q Thank you. And was your pension paid based on both  
15 your salary and overtime and court time?

16 A Yes.

17 Q And how was your pension calculated?

18 A How was my pension what?

19 Q Calculated.

20 A My specific pension is -- I received a disability  
21 pension because of my injuries, so I got 50 percent  
22 of my --

23 Q Of your base salary?

1 extended hours through most of the summer also.

2 Q Did you work a lot of overtime in the Strike Force?

3 A As much as anybody else, I would say. Probably  
4 average --

5 Q What --

6 A -- average for lieutenants.

7 Q Average for lieutenants on the Strike Force?

8 A Correct.

9 Q And about how much overtime did you work on the  
10 Strike Force?

11 A Well, I think you pointed it out earlier. I had  
12 about 65,000, 70,000 dollars worth of overtime  
13 earnings one year.

14 Q And was that more than when you worked in the A  
15 District?

16 A Yes.

17 Q About how much overtime did you work in the A  
18 District?

19 A Very little.

20 Q And when you say "very little," about how much is  
21 very little?

22 A I'll say probably 80 to a hundred hours a year.

23 Q I'm sorry. Can you repeat that?

1 the proper training. They -- it's -- it was up to  
2 each individual or car crews to determine what  
3 vehicle and traffic laws they wanted to, A, write  
4 summonses for or give guidance, show some officer's  
5 initiative, just inform a motorist. I don't need to  
6 micromanage them.

7 Q Uh-huh. Did you provide training on search and  
8 seizure law?

9 A I didn't hear that. You broke up.

10 Q Did you provide trainings on search and seizure law?

11 A No. But we did occasionally have training on search  
12 and seizure law provided by the Erie County District  
13 Attorney's Office.

14 Q And did you provide training on racially biased  
15 policing?

16 A We had -- I did not personally provide the training.  
17 We had in-service training periodically on, I would  
18 say, you know, racial discrimination, as well as  
19 officer safety, as you said search and seizure.  
20 These were routine in-service training topics that  
21 were provided by -- I'm going to use like an umbrella  
22 statement -- the Buffalo Police Training Academy, but  
23 it could have been provided by outside vendors too

1 under the academy.

2 Q And what kind of in-service training on racial  
3 discrimination did you receive?

4 A The same thing that all the other officers received.

5 Q When did you receive that?

6 A I couldn't give you dates. However, I would say  
7 however often the training academy had set up, you  
8 know, and they would keep their records as to what  
9 units, what officers were required to get what  
10 training at what interims.

11 Q Uh-huh. So you don't have any specific recollection  
12 of what racial bias training you received?

13 A No.

14 Q Or that your officers received?

15 A No, I don't know the specifics, no.

16 Q Okay. Would it surprise you if we have not found a  
17 record of any training on racial discrimination --

18 MR. SHORT: Form.

19 Q -- racial bias in particular?

20 A That would surprise me, yeah.

21 Q All right. We will talk about that more in a bit.

22 For now, so while you were at Strike Force, did  
23 you -- actually, let me ask about that. So what do

1           you remember about the substance of the racial  
2           discrimination training that you received?

3       A     It's unacceptable, that we're here to do a job based  
4           on someone's behavior. That is it.

5       Q     And do you have any recollection of when you received  
6           this training?

7       A     No. I already said I don't remember specifically.  
8           And as I stated, it would be something that the  
9           training academy probably -- like in-service pistol  
10          training or pistol range, they keep records on which  
11          officers had training when and when they're due to  
12          have them again.

13      Q     Okay. So you don't remember the specifics of  
14          attending that training; is that right?

15      A     That's correct.

16      Q     All right. So back to Strike Force, did you report  
17          to a Strike Force captain?

18      A     Did I report to a Strike Force captain?

19      Q     Yep.

20      A     No. As I stated, we worked under the Housing  
21          captain. There was no specific Strike Force captain,  
22          at which -- the two when I was on the job were  
23          Captain Patrick Roberts and Captain Phil Serafini.



1 Q So was there anyone who was giving direct orders and  
2 managing your work as Strike Force captain -- as a  
3 captain?

4 A Was he managing our work, the captain?

5 Q Yes.

6 A No. Not really, no. I mean he was just a rank. He  
7 was a captain in the same building, and if he saw  
8 something, I'm sure he made suggestions. And he's a  
9 captain. Of course, I'll take those suggestions to  
10 heart.

11 Q So there was no Strike Force captain. There was only  
12 a Housing Unit captain and that was -- and that was  
13 first Patrick Roberts, correct?

14 A That's correct.

15 Q And would you meet with him on a regular basis?

16 A I saw him every day that we both worked.

17 Q Okay. And did you --

18 A I would walk through his office to get to mine.

19 Q Okay. Did you have a formal meeting with him on a  
20 regular basis?

21 A No, I don't think so.

22 Q Did he evaluate your performance?

23 A No.

1 Q Did anyone evaluate your performance?

2 A I'm sure unofficially we were evaluated, but in the  
3 Buffalo Police Department, in compliance with the  
4 collective bargaining agreement, we do not have  
5 personal evaluations.

6 Q Okay. And so you never evaluated your officers; is  
7 that correct?

8 MR. SHORT: Form.

9 A No. Did I have opinions? Of course, they're my  
10 opinions, but there was no formal evaluation.

11 Q Okay. So if any of your officers ever had a problem,  
12 there was no formal way to address that problem; is  
13 that correct?

14 MR. SHORT: Form.

15 A You could address it. You could bring charges  
16 against an officer, yes.

17 MR. SHORT: Form.

18 Q And did you ever bring charges against an officer?

19 A No -- wait. When I was an A District lieutenant, I  
20 did bring charges against an officer.

21 Q Under what circumstances?

22 A We were in a -- we'll call it a street huddle, a  
23 street -- a big brawl. And all my officers, myself

1           When you park that plate reader, it's going to  
2           tell you right away which cars have to be pulled over  
3           for insurance lapse, suspended registrations, things  
4           like that.

5       Q     And how would officers find guns or other contraband  
6           during checkpoint stops?

7                     MR. SHORT:   Form.

8       A     Well, as I already stated, if the person's car was  
9           going to be impounded, then there would be an  
10          inventory sheet for the impound. Now, if you've got  
11          somebody in the back of your police car while you're  
12          writing summonses to that person and the officers  
13          begin to search -- do an inventory search of the  
14          vehicle so that they can log anything that's in the  
15          vehicle so we're not accused of stealing anything and  
16          they look under the seat and find any kind of  
17          contraband or through the trunk and they find this  
18          contraband, that's just part of the job.

19                And a guy that takes off running, well, he took  
20           off running. Of course, that's going to make you  
21           want to search the vehicle.

22       Q     Uh-huh. And under what circumstances during  
23           checkpoints were officers permitted to search

1 A I believe it's accurate. We -- the superior officer  
2 in this circumstances would have been the lieutenant  
3 and you're going -- at the end of your shift, you're  
4 going to compile this activity report. And then this  
5 is the directive, the roadway safety directive, and  
6 this is the form you would use at a briefing in the  
7 beginning of the tour of duty.

8 Q Okay. All right. So I'm going to now show Exhibit  
9 12, which is a -- entitled Buffalo Police Department  
10 Roadblock Directive, correct?

11 A That's what it is.

12 Q And if you review it, this is dated December 7, 2013,  
13 and it is signed by you; is that correct?

14 A Yes, it is.

15 Q That is your signature?

16 A Yes, it is.

17 Q And is this an example of the checkpoint form  
18 referenced in 10.5 of the MOP?

19 A Yes, it is.

20 Q And this includes the location of the checkpoint,  
21 correct?

22 A Yes.

23 Q And this is -- the location is Cloverdale and Bailey;

1 is that right?

2 A That's correct.

3 Q And Cloverdale and Bailey, is that on the east side  
4 of Buffalo?

5 A Yes, it is.

6 Q While you were with the Strike Force, did you fill  
7 out a traffic checkpoint form every time you  
8 supervised a checkpoint?

9 A I'm going to answer yes, but I'm also going to --  
10 with the caveat did I ever forget, maybe.

11 Q Okay. How often would you forget?

12 A Not often.

13 Q All right. How many checkpoint forms do you think --  
14 you do you estimate that you signed while you were  
15 with the Strike Force?

16 A Three years, 500.

17 MS. MALHOTRA: Okay. And we'll just  
18 note for the record that counsel has not seen  
19 a sizeable number of checkpoint forms signed  
20 by Mr. Whelan and reserve the right to  
21 request those forms following this  
22 deposition.

23 Q So let's go back to the MOP. Give me a second.

1 yes, historically they would -- most of the  
2 complaints would be by them. Now, as far as formal  
3 complaints that went to the department, I don't know  
4 anything about that. It's above my pay grade.

5 Q Okay. And would you say any of the complaints that  
6 were raised to you during the checkpoints had to do  
7 with your officers engaging in any misconduct?

8 A No.

9 MR. SHORT: Form.

10 Q So you never received any complaints about Strike  
11 Force officers engaging in misconduct when conducting  
12 checkpoints?

13 A I had complaints about officers. I don't know the  
14 specifics as far as during the checkpoint.

15 Q Did you ever observe any of your officers engaging in  
16 misconduct or violating the procedure during the  
17 checkpoints when you were out in the streets?

18 A The question is did I witness officers engaging in  
19 misconduct? No, I never witnessed officers engaging  
20 in misconduct.

21 I witnessed some officers whose dialogue might  
22 have been a little bit too strong with the person.

23 As I already stated, not everybody is a criminal

1 sometimes, the Internal Affairs would ask the captain  
2 to get a statement from that officer. And if that  
3 officer was on my platoon, the captain would say,  
4 hey, Lieutenant get so-and-so to fill out a P-73 and  
5 send it to Internal Affairs and CC me. As far as  
6 investigating inappropriate behavior by officers,  
7 it's not my job.

8 Q Okay. And did you ever hear any officers use any  
9 language that you would consider racially biased?

10 MR. SHORT: Form.

11 A Listen, I was a cop for 22 years. The only answer to  
12 that is yes. Obviously, I heard people say things  
13 they shouldn't have been saying.

14 Q What kind of things would you hear people say that  
15 they shouldn't?

16 A Come on.

17 MR. SHORT: Form.

18 Q This is a deposition, Mr. Whelan. You have to answer  
19 the question.

20 A Using the N word, degrading people. That's it.

21 Q Okay.

22 A You know what, I'll just answer your next question.  
23 Have I ever said it? Yes, I have, obviously. I'm a

1 human being.

2 Q Okay. Have you said it towards other individuals --  
3 towards individuals during checkpoints or traffic  
4 stops?

5 A Have I, no. It's beneath me.

6 Q In what circumstance -- okay. In what circumstances  
7 have you heard officers use those terms?

8 A I couldn't even tell you. Situations where there's a  
9 ton of street commotion and there's been a shooting  
10 and there's people running, screaming and cops are  
11 yelling foul language and we're getting it right back  
12 in our faces too.

13 Q And how would you respond when you heard an officer  
14 use that kind of language?

15 A Probably not strongly enough.

16 Q What do you mean by that?

17 A Well, first off, it was mostly when I was a police  
18 officer, and you know, I'm not in a position of  
19 authority so to speak. But we all have regrets in  
20 life, I guess.

21 Q What do you mean by that?

22 A I probably should have spoken up, but I didn't when I  
23 heard other officers using this kind of language.



1 But once I became a lieutenant, everybody knows the  
2 standard which I hold my people to. People flocked  
3 to get on my platoon whether it was A District or the  
4 Strike Force Unit. I like to say that that was a  
5 credit to myself.

6 Q Uh-huh. Okay. Okay. So have you ever heard of  
7 anyone within the BPD being reprimanded for using  
8 that kind of language?

9 A Probably. But I can't name specifics, and it  
10 probably did occur a lot above my pay grade.

11 Q And did you ever reprimand anyone for using that kind  
12 of language?

13 A No. Because the people who worked for me knew  
14 better. First off, half my platoon were  
15 African-Americans, and they were great police  
16 officers. So no. And the rest of my platoon treated  
17 them with the same respect they knew they deserved.

18 Q Okay. Is it your position that officers who are  
19 African-American can't have racial bias --

20 MR. SHORT: Form.

21 Q -- or make racially derogatory --

22 A We won't drag anybody else into this, but one of my  
23 very good friends, a Black lieutenant, he was really

1 good at dishing it out. That's all I'll say.

2 Q What do you mean by that?

3 A He had a unique personality, and he meant no harm,  
4 but he was really good at dishing it out.

5 Q Okay. By "dishing it out," do you mean that he would  
6 use racially offensive language?

7 A Sometimes.

8 Q And what kind of --

9 A And to all involved. He was an equal opportunity  
10 hater.

11 Q And what kind of racially offensive language would he  
12 use?

13 A He would use racially insensitive language towards  
14 both whites and Blacks.

15 Q Uh-huh. And what kind of language would he use?

16 A If we were on the street and there was people who  
17 needed a good thrashing verbally, he had no problem  
18 calling them the N word and if they were white  
19 calling you honkies, you know, whatever.

20 And you know what, getting a good verbal  
21 thrashing beats going to jail any day, so I doubt  
22 there was very many complaints.

23 Q And when he would use the N word, would he use it in

1 a demeaning way?

2 A Is there any other way?

3 Q So I take it your answer is yes?

4 A So it's -- there's a way to use the word that it's  
5 acceptable?

6 Q I'm not asking that. I'm taking from your testimony  
7 that the use of the N word is always --

8 A It was demeaning; it was demeaning.

9 Q And why was it demeaning?

10 A It's not appropriate. It's something that brings up  
11 a tragic past history of our country.

12 MS. MALHOTRA: Okay. Okay. I think  
13 it's 12:23. Is everyone okay taking a  
14 15-minute break for lunch?

15 THE WITNESS: Sure.

16 MS. MALHOTRA: Does that work, 15  
17 minutes?

18 MR. SHORT: I'm going to ask for 30  
19 minutes. I do not work in this building. It  
20 will take me a little longer.

21 MS. MALHOTRA: Okay. 30 minutes. So  
22 let's circle back at 12:53.

23 (A recess was taken.)

1 Q Okay. And what were the police officers' duties  
2 during the checkpoint?

3 A As a vehicle approached, it was to look for any  
4 obvious vehicle and traffic violations. And if any  
5 were noticed, then they would request the driver's  
6 license of the operator.

7 Q Okay. And how many officers would be at kind of like  
8 the initial stop of the checkpoint?

9 A One car crew would not be right at the checkpoint.  
10 They might be a block away in case someone tried to  
11 turn around.

12 Q Okay. And then so as cars were approaching the area  
13 where the police officers were, how many officers  
14 were at that initial stop?

15 A Two to a car, one on each side.

16 Q Two officers, okay. And then how many would be  
17 writing tickets?

18 A I guess that would depend on the day and  
19 circumstances, you know, what did we encounter early  
20 in the checkpoint.

21 Q All right. And so there would be two officers at the  
22 primary -- one or two officers in case anyone tried  
23 to leave the checkpoint area?

1 A There would be two officers, one car crew in some  
2 location in case someone tried to turn around and  
3 flee the checkpoint area.

4 Q Okay. And were the rest of the officers writing  
5 tickets?

6 A They would be conducting the checkpoint, so let's  
7 just say the first car crew is -- they're the initial  
8 approach to the checkpoint. They're going to stay as  
9 the first officers unless they're pulling a car over  
10 for some violation. Now, they stay with the car, and  
11 then the next two officers become the primary.

12 Q Okay. And are those two officers just kind of  
13 waiting until they're called to be the next officers  
14 to do the checkpoint?

15 A Yes. They're, you know, an officer presence.  
16 They're out. They're visible. Additionally, if we  
17 chose to do the checkpoint in a more high volume  
18 traffic area, we would be doing two, three cars at a  
19 time to keep the traffic clear.

20 Q And so by two or three cars at a time, you mean that  
21 some officers would be checking cars that were  
22 waiting in line to go through --

23 A Correct.

1 Q And how many cars would typically pass through a  
2 checkpoint?

3 A Again, it depends on the location and the time of  
4 day. Sometimes a couple hundred or 150 if we were up  
5 on Walden, and if we were on a side street, maybe  
6 only 20.

7 Q Uh-huh. And so was there a line sometimes of cars  
8 waiting to go through the checkpoint?

9 A Sometimes there was.

10 Q And how long would that line be? What's the range?

11 A Five, six cars deep, seven cars deep.

12 Q Okay. And how long would that initial stop take  
13 when -- the initial stop at the checkpoint take?

14 A If everything was -- there was no obvious violation,  
15 seconds.

16 Q Okay.

17 A 10 seconds, 15.

18 Q All right. I'm going to ask some questions about  
19 that. And in your experience in working with Strike  
20 Force, how long did checkpoints usually last?

21 MR. SHORT: Form.

22 A They were directed to last an hour. I'm not going to  
23 lie. We usually cut them off at about 45 minutes.

1 Q Okay.

2 A And sometimes out of necessity a lot less based on  
3 manpower getting taken up.

4 Q After the checkpoint ended, would there still  
5 sometimes be cars waiting to receive tickets?

6 A Sometimes.

7 Q All right. So did drivers have the option to drive  
8 by the checkpoint?

9 A You mean not go through the checkpoint?

10 Q Yes.

11 A No, they did not.

12 Q So when it came to the checkpoint, you did not pick  
13 and choose the drivers that went through the  
14 checkpoint, right?

15 A No. Everybody has got to go through the checkpoint.  
16 Once in a blue moon, somebody didn't understand what  
17 was going on and they would turn around. And the car  
18 that I described earlier would chase them down and  
19 they were just a confused motorist that thought the  
20 road was blocked. And then we did have legitimate  
21 turn-arounds to evade also.

22 Q And so you stopped everyone at that first stop  
23 regardless of if they were -- seemed suspicious?

1 A Yes. Everybody gets stopped.

2 Q All right. And so in your experience were -- sorry.

3 Let me rephrase that. In your experience were  
4 vehicles selected -- they were not selected to go  
5 through checkpoints because they may have committed a  
6 traffic violation, correct? Everyone had to go  
7 through the checkpoint?

8 A Everybody has got to go through the checkpoint, yes.

9 Q I'm going to turn back to the Manual of Procedures.  
10 So if we take a look at Section 10.5 -- let's see,  
11 Section C says, "Set the traffic checkpoint  
12 (roadblock) in a way that minimizes the possibility  
13 of avoiding it," correct?

14 A That's correct.

15 Q In your observation and experience, to what extent  
16 does Section C reflect the actual practice at  
17 checkpoints?

18 A We did our very best to do that, which really kind of  
19 limits the location because -- this is -- you're in a  
20 city block. There were certain days I had a lot more  
21 manpower and I could afford to put -- or any  
22 lieutenant. When I say "I," I mean the lieutenant  
23 could afford to put additional chase cars on some of



1 the streets that were turn-offs coming up to the  
2 checkpoint.

3 But most of the time, you're there with six  
4 officers, three cars, and a lieutenant -- two  
5 lieutenants. So you have to conduct your checkpoint  
6 in an area that your manpower is going to facilitate  
7 that. So some of the locations became very redundant  
8 because we were doing the best we could with the  
9 manpower we had.

10 Q Uh-huh. And so you would try to avoid areas where  
11 there were turn-offs; is that right?

12 A Tried.

13 Q Was there anything else you did to try to make sure  
14 that you avoided the possibility of drivers avoiding  
15 the checkpoint?

16 A No, I don't think so.

17 Q Did you block off streets or intersections so people  
18 would be funneled through the checkpoint?

19 A No.

20 Q So 10.5(D) says, "Conduct a traffic stop on any  
21 vehicle that attempts to avoid the traffic  
22 checkpoint. Officers are permitted to check the  
23 motorist."

1 might just determine that when they look at the  
2 vehicle or run the registration or whatever they did  
3 in the traffic stop, there's nothing wrong or  
4 nefarious and it's just a motorist that's confused.

5 Or they might call me on the radio or call the  
6 lieutenant on the radio and say, hey, there's nothing  
7 here, this guy is just confused. Honestly, they can  
8 decide that on their own.

9 Q Okay. Did you -- how did you differentiate whether a  
10 driver was taking a turn before a checkpoint or  
11 trying to --

12 A Again, we would try to select these areas that were  
13 natural bottlenecks so that you couldn't -- if you're  
14 going to do, you know, this checkpoint on a street  
15 with eight side streets leading up to it, there's no  
16 way to do that. You know, you're just going to put  
17 your chase car one street back. So it's all about  
18 manpower and choosing some type of natural  
19 bottleneck. One-way streets worked great.

20 Q Okay. And all right. So if we turn to 10.5(F), it  
21 says, "During the traffic checkpoint, check all  
22 vehicles for proper registration and vehicle  
23 inspection stickers affixed to the windshield;" is

1           that right?

2       A       That's what it says.

3       Q       And is that -- is it consistent in your experience  
4           that that is what police officers did during the --  
5           during the checkpoint, the initial stop?

6       A       We did that, also additional -- additional immediate  
7           inspections.

8       Q       What are additional immediate inspections?

9       A       Tinted windows, both license plates affixed to the  
10          vehicle, and license plate covers.

11      Q       Okay. And would officers walk around the car to  
12          determine whether those -- the car was in compliance  
13          with those laws?

14                       MR. SHORT: Form.

15      A       That's correct. One officer engaged the operator of  
16          the motor vehicle. The other officer walked to the  
17          back and see that the license plate was there and  
18          didn't have a cover on it.

19      Q       Okay. Did the officers engage every driver that went  
20          through a checkpoint?

21      A       Yes.

22      Q       How did the officer engage the driver?

23      A       They would hold their hand up in the universal sign

1 to stop. They would walk up. If they didn't  
2 automatically roll the window down, they would ask  
3 them to roll the window down. I encouraged the  
4 officers to just volunteer this is a roadway safety  
5 checkpoint and if there was nothing visible wrong by  
6 this point, just in seconds, the other officer would  
7 give them a thumbs-up, and then we would wave them  
8 through.

9 Q Would the officer ask for the driver -- driver's  
10 license and registration?

11 A Registration is affixed to the window and no, they  
12 didn't ask for a license.

13 Q Okay. And then so if you look at 10.5(E), during the  
14 traffic checkpoint, check all drivers for proper  
15 wearing of seat belts, is that consistent with your  
16 experience with how officers ran checkpoints?

17 A Yes.

18 Q And 10.5(G) says act upon all probable cause  
19 situations arising from information obtained from a  
20 mobile plate reader and/or from an officer initiated  
21 safety observation; is that correct?

22 A That's correct.

23 Q In your observation and experience, does Section G

1 reflect the practice of BPD officers during  
2 checkpoints?

3 A That's correct.

4 Q And would officers inspect the entire car for  
5 anything in plain view that could give rise to  
6 probable cause?

7 MR. SHORT: Form.

8 A No. If it's in plain view, it's in plain view and  
9 believe it or not, you'd be surprised how many of  
10 these cars roll up -- and are you familiar with old  
11 Cheech and Chong movie where they roll down the  
12 windows and marijuana smoke comes billowing out?  
13 They actually do that. That's probable cause in my  
14 world.

15 Q Why is that probable cause?

16 A Operating under the influence.

17 Q And how would officers verify it was marijuana smoke?

18 A Through their experience and training.

19 Q Okay. And so there were some vehicles where there  
20 was marijuana smoke coming out of the car.

21 What other circumstances did officers encounter  
22 that would lead to probable cause to pull over the  
23 car?

1 A Aside from the vehicle and traffic stuff that we've  
2 already discussed?

3 Q Yes.

4 A Things that are sticking out in plain view, a  
5 bottle -- a bag of pills on the seat next to the  
6 person, possibly underage people under the influence  
7 of narcotics or alcohol. I mean, a lot of things.

8 Q Why would a bottle of pills give rise --

9 A I corrected myself. I said a bag of pills, like a  
10 baggy.

11 Q All right. So during the initial examination, did  
12 officers have license plate readers?

13 A Not when the unit was initially formed, but we did  
14 get two plate readers later on.

15 Q Okay. When was that?

16 A I don't know the exact dates, but I'll say 2014,  
17 middle of 2014.

18 Q Okay. And in your experience, was there anything  
19 else that officers looked for when examining vehicles  
20 like tires, mirrors, bulbs, headlights?

21 A We did do that. If we were conducting a checkpoint  
22 at night, we would check all the lighting. We did  
23 not ask people to turn on their blinkers like a

1 safety inspection. But if they pulled in with a  
2 headlight or a taillight out, that was enough to  
3 warrant further investigation, you know, write them a  
4 summons for that.

5 Also there was plenty of situations where we did  
6 take people's cars for bald tires with the cord  
7 sticking through them.

8 Q Okay. And you said that you instructed your officers  
9 to ask drivers to roll down their windows?

10 A If they did not roll down the window when they were  
11 approached, the officers did ask them to roll down  
12 their window.

13 Q Would the officers ask any -- the drivers any  
14 questions?

15 A Not that I'm aware of.

16 Q And so the purpose of asking them to roll down their  
17 windows was to inform them that there was a  
18 checkpoint?

19 A Correct.

20 Q Okay. All right. And to your recollection, did the  
21 officers for the Strike Force Unit have window tint  
22 readers during this initial stop?

23 A Many of the officers did, and I personally had one

1 A No. I didn't tell them what to do, no. That's  
2 micromanaging.

3 Q Okay. So the drivers would get pulled over for  
4 violations of law including illegal tints from the  
5 visual inspection, the license plate readers; is that  
6 correct?

7 A Correct.

8 Q Were there other reasons drivers would get pulled  
9 over for a secondary stop other than vehicle and  
10 traffic violations?

11 MR. SHORT: Form.

12 A Plain view contraband offenses. That's all I can  
13 think of.

14 Q Okay. And you mentioned seeing a bag of pills or  
15 smelling marijuana. Were there any other plain view  
16 observations that would cause BPD officers to pull  
17 over a driver for a secondary stop?

18 A In the course of my three years as a Strike Force  
19 lieutenant, I'm sure there was.

20 Q Can you give me some examples?

21 A The butt of a handgun sticking out from between the  
22 seats, any kind of contraband like that. And I will  
23 tell you also lack -- failure to comply, failure to



1           comply. There's some little -- maybe inspection --  
2           there's some visual thing that we want to talk to  
3           this person about and they don't want to comply --  
4           they don't want to pull over. They're berating us,  
5           this is nonsense, are you familiar with the free  
6           traveling laws of the United States of America, I'm a  
7           sovereign citizen, just keep on going. That's going  
8           to make me want to pull you over.

9       Q     Uh-huh, uh-huh. Why would that make you want to pull  
10           them over?

11      A     Because they're not complying with my lawful order.

12      Q     Okay. I see. So all right. So what proportion of  
13           drivers that went through the checkpoint were pulled  
14           over for secondary stops?

15                   MR. SHORT: Form.

16      A     I don't even have a -- any kind of basis to -- I  
17           don't know. There was plenty of times we did the  
18           checkpoint and pulled three cars over in an hour.  
19           And there were times, as I already stated, we had six  
20           cars in ten minutes.

21      Q     Okay. And then what would happen during the  
22           secondary stop?

23      A     The officers would approach the car, ask them to

1 produce. Now they're asking them to produce their  
2 driver's license and proof of insurance. There may  
3 be a discussion about whatever the violation is, and  
4 it would go from there.

5 Q Okay. And how would -- walk me through the process  
6 of what it means for someone to get a ticket. So  
7 officers would approach a driver and -- sorry.

8 Tell me about the procedure. Yeah, tell me  
9 about the procedure during the secondary stop. So  
10 officers would approach a driver for their license  
11 and registration.

12 A Officers are going to --

13 MR. SHORT: Form.

14 A At the initial stop at the road safety checkpoint,  
15 you're going to tell the person -- you may or may not  
16 tell them your inspection is expired, your  
17 registration is expired or whatever, or you may just  
18 say I need you to pull over to the side of the road.

19 So they pull over. Now you and your partner are  
20 going to follow that car. For officer safety, the  
21 other officer would be on the passenger side of the  
22 car, whether it's a single occupant or it's got five  
23 people in it.

1           Now, the officer who's initiating the stop, he's  
2           going to ask for the operator's driver's license and  
3           proof of insurance. Now if -- we'll just say that  
4           there's no extenuating circumstances. Now the  
5           officers are going to go back to their car and use  
6           the mobile computer terminal. By the way, that's the  
7           computer terminal we send the messages on, the MCTs,  
8           mobile computer terminals.

9           You would go back, and you would use the New  
10          York State Department of Motor Vehicles website,  
11          database to run both a vehicle registration and a  
12          driver's license.

13       Q       And how long would that process take?

14       A       That really was dependent on your computer speeds.  
15               And in the early days when we were first getting  
16               these MCTs, we would have a lot of hiccups. And a  
17               lot of times, you just had to give the person back  
18               their driver's license and let them go because you  
19               would be waiting ten minutes for it to come back, or  
20               it wouldn't come back in ten minutes. So I would  
21               tell them, "Just give the guy his driver's license  
22               back and get him out of here."

23               If there was -- well, they had to have some

1 reason to pull them over, so if there was an  
2 equipment violation, I would tell them, "Just write  
3 the equipment violation and let them go."

4 Q And what information would be generated by the MCT?

5 MR. SHORT: Form.

6 A On a registration end, it would come back and tell  
7 who the car was registered to, whether it was valid  
8 or not. If it was suspended, it would list the  
9 suspension dates and what it was suspended for.

10 Then -- and then let's just say the operator is  
11 not the owner of the car. It would also give a  
12 warrant status of the owner of the vehicle.

13 Now you're going to run the driver's license.  
14 It's going to give you the same information but for  
15 your license, is his license valid or not; if it's  
16 suspended, what it's suspended for and if there's any  
17 warrants for that person.

18 Q And would the driver's license be run through the MCT  
19 as well?

20 A That's what I just stated. You would punch in the  
21 driver's license numbers on a different screen, and  
22 it would give you all that information for the  
23 driver.

1 A Possibly. But I can't think of any specific  
2 circumstances involved in that. I asked plenty of  
3 motorists have you been smoking weed, have you -- you  
4 know, have you been drinking tonight, even if they  
5 weren't exhibiting the -- if I pulled them over for  
6 something unrelated, you know, to tell them, hey,  
7 maybe it's a good idea to park your car over there  
8 and walk home without getting involved in the whole  
9 DWI field sobriety thing because I knew I didn't have  
10 the probable cause for a stop. I pulled a guy over  
11 because his taillight is out.

12 Q Okay. So sometimes these stops would result in  
13 arrests or intelligence related to criminal activity,  
14 correct?

15 A Yes.

16 Q Okay. And so -- when -- at the checkpoints when  
17 officers were giving out tickets and -- strike that.  
18 During the secondary stop when officers were --  
19 during secondary stops, were there cars waiting to  
20 receive tickets?

21 A Often.

22 Q What are the range of cars that would be waiting to  
23 receive tickets?

1 MR. SHORT: Form.

2 A Well, that would depend on how many officers I had.  
3 I mean, I can't pull more cars over if I don't have  
4 any more officers to address each individual vehicle.

5 So if I ran -- if we were running a checkpoint  
6 and all the officers were involved with a traffic  
7 stop, myself and the other lieutenant, we would  
8 continue to do the checkpoint. And then if I had to  
9 stop somebody and pull them over, that would be the  
10 end of the checkpoint and/or somebody who was just  
11 writing an equipment violation would be done in five  
12 minutes, and they would come back to the line for the  
13 checkpoint.

14 But as I said early on, sometimes we would have  
15 six cars pulled over in ten minutes, and that's the  
16 end of the checkpoint because these people are going  
17 to be involved for 30 minutes or more in dealing with  
18 the circumstances surrounding their individual's  
19 traffic stop.

20 Q And so what might be the longest that someone might  
21 have to wait for a ticket after they've been pulled  
22 over for a secondary stop?

23 A Someone who's getting four or five summonses because

1           it's -- you know, you're involved in unclassified  
2           misdemeanors and their car is getting impounded,  
3           they're going to be waiting 30 minutes.

4       Q       And did some cars wait upward of 30 minutes?

5       A       In those circumstances, yes.

6       Q       And could some drivers wait up to an hour?

7                       MR. SHORT: Form.

8       A       I'm not going to say nobody ever waited an hour, but  
9           we did our very best to mitigate those circumstances.  
10       And the people who were waiting an hour, I'm going to  
11       guess might have been people who were going to be  
12       detained and going downtown under arrest.

13       Q       Okay. All right. So when you were doing  
14       checkpoints -- let me be clear.

15               So the two officers at the initial stop, would  
16       they be responsible for then giving the drivers the  
17       ticket and then new officers would come and do the  
18       stop, or did that vary?

19       A       Yes. If they stopped the vehicle for any purpose,  
20       they walked right with the vehicle to wherever  
21       staging area we had designated in that situation, and  
22       they wrote the summonses. If the car was required to  
23       be impounded, if the driver or any of the occupants

1 discuss impounds.

2 MS. MALHOTRA: Would everyone mind if I  
3 took just a two-minute bathroom break?

4 THE WITNESS: No, not at all.

5 MS. MALHOTRA: Okay. Great. Does  
6 anyone need longer than that, or is two  
7 minutes okay?

8 (A recess was taken.)

9 BY MS. MALHOTRA:

10 Q All right. So Strike Force officers sometimes  
11 impounded cars at checkpoints, correct?

12 A I didn't hear your question.

13 Q Strike Force officers sometimes impounded cars at  
14 checkpoints, right?

15 A Yes.

16 Q How often did Strike Force officers impound cars at  
17 checkpoints?

18 MR. SHORT: Form.

19 A Every day.

20 Q And what's the range of cars that would be impounded  
21 at checkpoints each day?

22 A One or two.

23 Q Okay. And was it ever more than that?



1 A She didn't care. She didn't -- that's not -- it's  
2 not her ball of wax.

3 Q So it's the commissioner --

4 A She had a lot of other things going on. But one of  
5 the things was I had to report my specialized unit  
6 and training schedule to the deputy police  
7 commissioner.

8 Q And was it routine for Derenda to express concern  
9 about lower production in times when you had depleted  
10 manpower?

11 MR. SHORT: Form.

12 A I think so, yes.

13 Q Okay. And was the -- so was this the reasoning to  
14 increase manpower, to increase production?

15 MR. SHORT: Form.

16 A We never increased manpower. We started our unit  
17 with four lieutenants and 20 officers, ten on each  
18 side. That was the base size of the unit. As a  
19 matter of fact, as the years went on, we actually  
20 lost people because -- through promotion. This guy  
21 is getting promoted to detective or lieutenant or  
22 they were transferred out. They wouldn't get  
23 replaced.

1 previous night at Broadway/Fillmore" as an example,  
2 "then a checkpoint should be conducted in that  
3 vicinity," right?

4 A Yes, ma'am.

5 Q Okay. And in this email, Captain Serafini says that  
6 Lockwood wants results from the daytime detail and  
7 that the daytime deal has always yielded good  
8 results, correct?

9 A Yes.

10 Q And by "results," do you understand DPC Lockwood and  
11 Serafini to be referring to traffic tickets and  
12 intels?

13 MR. SHORT: Form.

14 A He is referring to any of the issues on that daily  
15 report. He's referring to productivity.

16 Q Okay. And how did you assign overtime?

17 A I'm sorry. What was the question?

18 Q How did you assign overtime?

19 A It's all by seniority.

20 Q So -- and you said the overtime rate was one and a  
21 half times salary?

22 A That's correct.

23 Q And how much overtime could officers do each month?

1 A Well, as much as they want, but we had a fifteen-hour  
2 rule for a daily. So in combination with your  
3 regularly scheduled shift, which was ten hours,  
4 you -- if you were scheduled to work that day, you  
5 could only work another five hours of overtime. If  
6 it was your day off, you could come in and work a  
7 full fifteen hours overtime if it was available.

8 Q Okay. And so could you do that seven days a week,  
9 work another five hours a day seven days a week?

10 A Yeah. There was some -- during the summer, there was  
11 some pretty sick people who just couldn't get enough.

12 Q So there were some officers that were working 35  
13 hours of overtime a week?

14 MR. SHORT: Form.

15 A Let me think about your question for a minute. Let  
16 me think. I'm not sure that that amount of overtime  
17 would have been available to them. But  
18 hypothetically, they could have worked 60 -- they --  
19 yes.

20 Q So 75 hours.

21 A Yeah, 75 hours a week.

22 Q And so would overtime be a big part of Strike Force  
23 officers' salaries?

1 A Absolutely.

2 MR. SHORT: Form.

3 Q All right. And was that a common reason that people  
4 took overtime, to increase their salary?

5 MR. SHORT: Form.

6 A Well, I don't go to work because I have nothing else  
7 to do. I go to work to make money to improve my  
8 family's quality of life.

9 Q Okay. All right. So turning back to this email,  
10 Captain Serafini -- detail would operate from 11:30  
11 to 3:30, correct? 1130 to 1530, correct?

12 A Correct.

13 Q I have no military experience. And then he says  
14 so -- so that is four hours a day; is that right?

15 A That's correct.

16 Q So every day six police officers and two lieutenants  
17 could get four hours of overtime each day; is that  
18 right?

19 MR. SHORT: Form.

20 A Yes. The way I'm reading it, yes, that's what it  
21 means, four hours a day, seven days a week.

22 Q Okay. And then two -- and then during that overtime  
23 detail, officers were expected to run two traffic

1 checkpoints during the detail; is that right?

2 A During this time frame --

3 MR. SHORT: Form.

4 A -- it appears that Deputy Commissioner Lockwood  
5 ordered two checkpoints to be conducted.

6 Q Okay. Sounds good. All right. So I'm going to show  
7 you Exhibit 7 again, which is Bates Number COB016098.  
8 And we're going to do a little math.

9 So in this email, as you recall, you requested  
10 additional overtime due to the upswing in violent  
11 crime in the city; that's correct, right?

12 A That's correct.

13 Q And then you state in the second paragraph that "The  
14 Strike Force has used discretionary overtime to  
15 achieve these goals in the following manner: One  
16 lieutenant and six officers for five hour segments, a  
17 total of six times per pay period;" is that correct?

18 A That's correct.

19 Q And so this would be five hour segments, six times  
20 per pay period times -- so that would be 300 hours of  
21 overtime; is that right?

22 MR. SHORT: Form.

23 A Combined for all officers?

1 Q Yes.

2 A Yes. Yes, 300 hours.

3 Q All right. Great. And you requested this overtime  
4 detail in part because four of the -- please strike  
5 that.

6 So in this email, you said, "Four of the details  
7 would be run during the MP-2 shift to provide  
8 visibility through vehicle and traffic checkpoints  
9 and area saturation, especially during early  
10 afternoon hours;" is that correct?

11 A That's correct.

12 Q And what's the MP-2 shift?

13 A Day shift.

14 Q And then you said, "The other two would run during  
15 later evening hours to supplement regular MP-4  
16 officers to provide greater presence through high  
17 visibility checkpoints," correct?

18 A Correct.

19 Q So you tied this request for overtime to run  
20 checkpoints; is that right?

21 A I put it in there, yes, that would be part of our  
22 duties.

23 Q And Captain Serafini testified that this request was

1 STATE OF OHIO )

2 COUNTY OF CUYAHOGA )

3 I, Luanne K. Howe, Notary Public, in and for the  
4 County of Cuyahoga, State of Ohio, do hereby certify:

5 That the witness whose testimony appears  
6 hereinbefore was, before the commencement of his testimony,  
7 duly sworn to testify the truth, the whole truth and nothing  
8 but the truth; that said testimony was taken remotely  
9 pursuant to notice at the time and place as herein set  
10 forth; that said testimony was taken down by me and  
11 thereafter transcribed into typewriting, and I hereby  
12 certify the foregoing transcript is a full, true and correct  
13 transcription of my shorthand notes so taken.

14 I further certify that I am neither counsel for  
15 nor related to any party to said action, nor in any way  
16 interested in the outcome thereof.

17 IN WITNESS WHEREOF, I have hereunto subscribed my  
18 name and affixed my seal this 2nd day of May, 2022.

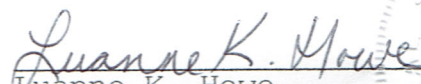
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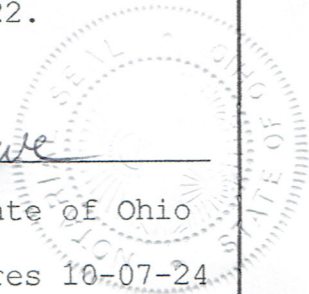
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Luanne K. Howe  
Notary Public - State of Ohio  
My commission expires 10-07-24



1 UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF NEW YORK

3 -----  
4 **BLACK LOVE RESISTS IN THE RUST, et al.,**  
5 **individually and on behalf of a class of**  
6 **all others similarly situated,**

7 Plaintiffs,

8 -vs-

1:18-cv-00719-CCR

9 **CITY OF BUFFALO, N.Y., et al.**

10 Defendants.  
11 -----

12 **ORAL EXAMINATION OF THOMAS WHELAN**

13 **APPEARING REMOTELY FROM**

14 **ERIE COUNTY, NEW YORK**

15  
16 Friday, June 8, 2022

17 At 9:00 a.m. - 10:55 a.m.

18 Pursuant to notice  
19

20 REPORTED BY:

21 Brooklyn Morton, Notary Public

22 APPEARING REMOTELY FROM ERIE COUNTY, NEW YORK  
23

**DEPAOLO CROSBY REPORTING SERVICES, INC.**

135 Delaware Avenue, Suite 301, Buffalo, New York 14202  
716-853-5544



—THOMAS WHELAN—

1 Q. Okay. What do you mean by that?

2 A. That he was a black lieutenant, a black police  
3 officer and that if his -- if these people had  
4 raised his level of anger and frustration to  
5 the point that he would use it that he felt --  
6 I don't know what he felt, but I interpreted  
7 it to mean that he felt it was appropriate to  
8 use.

9 Q. Okay. Did -- you said it was effective. Why  
10 was the use of the N word effective?

11 A. It got their attention. Coming from him, it  
12 got their attention.

13 Q. Okay. And how did it get their attention?

14 A. I think it got across the point that he meant  
15 business.

16 Q. Mh-hmm. And did you ever talk to -- counsel  
17 him on whether that language was appropriate  
18 or not?

19 A. No.

20 Q. Did you ever report him to anyone for using  
21 that language?

22 A. No.

23 Q. And you said that -- you gave one example of

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—THOMAS WHELAN—

1 him using it on the street with gangs. Can  
2 you give me any other examples of when he  
3 would use that language?

4 A. Just at these very large gathering parties he  
5 would yell that they all better move along.

6 Q. Okay. And he would use the N word when he  
7 stated that?

8 A. Sometimes.

9 Q. Okay. And so there were, like -- okay. So  
10 were there any other officers around when he  
11 used that language?

12 A. I am sure there were.

13 Q. Do you remember who those officers were?

14 A. I am sure I don't. There were dozens of us on  
15 the scene trying to control very large crowds  
16 of hundreds of people in the street partying,  
17 obstructing traffic.

18 Q. And do you think that those circumstances give  
19 rise to a permissible use of that language,  
20 the N word?

21 MS. RAUH: Form.

22 A. Can you ask the question again?

23 Q. Yeah. Did you think that those circumstances

—DEPAOLO CROSBY REPORTING SERVICES, INC.—

—THOMAS WHELAN—

1           that you just described gave rise to an  
2           appropriate use of the N word?

3                       MS. RAUH: Form.

4           A. If using foul language or even derogatory  
5           language will get people to comply with what  
6           you are trying to get them to do, then I guess  
7           I do think it is acceptable because it's a  
8           very busy hot summer night and we don't feel  
9           like having to arrest six or eight people for  
10          simply obstructing traffic. And if putting  
11          our arms across the street and walking towards  
12          them and a couple officers yelling to get back  
13          will gain their compliance, then that's a win.  
14          Compliance is what we want.

15                    I didn't go to work -- no officer goes  
16           to work every day thinking I want to arrest  
17           people. No. I don't want to arrest people.  
18           I want them to enjoy their life just like I  
19           want to enjoy my life, but I don't want them  
20           in the street obstructing the city bus that is  
21           trying to get by or the fire department or  
22           just regular citizens. And you mentioned  
23           earlier in my previous testimony, I said

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—THOMAS WHELAN—

1 something and I will paraphrase that a good  
2 verbal thrashing beats going to jail every  
3 day. That's true. Nobody wants to go to  
4 jail.

5 Q. Mh-hmm. And that thrashing could include  
6 racially derogatory language like the N word?

7 A. You asked me if I ever heard Lieutenant  
8 Watkins use the word and I said yes and I  
9 explained how it was effective.

10 Q. Okay. And so you just testified that you have  
11 heard other officers use the N word and in  
12 your previous deposition that you heard  
13 officers who were not black use the N word in  
14 situations. "In situations where there's a  
15 ton of street commotion and there's been a  
16 shooting and there's people running and  
17 screaming and using foul language." And so  
18 are you -- when you made that statement, were  
19 you referring to the same types of situations  
20 where other officers use the N word?

21 MS. RAUH: Form.

22 A. I would -- yes. Yes. When the crowd is  
23 screaming vulgar language at you and racial

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—THOMAS WHELAN—

1           epithets. Officers are human, too, and it  
2           gets a rise out of them and they respond in  
3           kind. In my previous testimony I told you  
4           that I have used the N word and I -- am I  
5           proud of it, no, but in the heat of the moment  
6           when you are surrounded by people and they are  
7           getting your -- they are raising your dander  
8           up by yelling and screaming at you or not  
9           complying and surrounding you, you are only  
10          human.

11         Q. Mh-hmm. And this is while you were a  
12           lieutenant?

13         A. An officer and a lieutenant.

14         Q. Okay. And what do you mean by you are only  
15           human?

16         A. All humans make mistakes.

17         Q. Okay. So you testified that you heard other  
18           BPD officers use racially offensive language  
19           and the N word. Who did you hear -- what  
20           other officers did you hear using the N word  
21           while on duty?

22         A. I can't recall who exactly. Probably every  
23           officer.

—DEPAOLO CROSBY REPORTING SERVICES, INC.—

—THOMAS WHELAN—

1 Q. Every officer you worked with?

2 A. Probably every officer at one time or another.

3 Q. Uh-huh. While you were a lieutenant as well?

4 A. Probably.

5 Q. Do you remember any of the specific -- so you  
6 -- would you say every officer in your platoon  
7 or your command used the N word?

8 MS. RAUH: Form.

9 A. That requires me to say that every officer I  
10 ever worked with -- or every officer on my  
11 platoon used the word, no. I am not going to  
12 commit to that.

13 Q. Okay. So how many times do you think you have  
14 heard other BPD officers use the N word?

15 A. Over a 21-year career, dozens.

16 Q. Dozens. By A District employee officers?

17 A. I don't know exactly where the officers were  
18 working at the times when I heard derogatory  
19 language.

20 Q. Okay. You described officers using this  
21 language in situations where there were large  
22 groups of people gathered and did -- and were  
23 there other circumstances -- strike that.

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1                   Where there were large groups of people  
2                   gathered. And were other superior officers  
3                   gathered during those times?

4                   MS. RAUH: Form.

5                   A. I don't recall.

6                   Q. Okay. All right. So did you ever report  
7                   anyone for using the N word while on duty?

8                   A. No.

9                   Q. Okay. Did you feel like you -- you said that  
10                  it was a mistake. Did you feel at any time  
11                  that it was your obligation to report anyone  
12                  for using the N word?

13                  MS. RAUH: Form.

14                  A. No.

15                  Q. Okay. What other words did you use -- I'm  
16                  sorry. I am sorry. Strike that.

17                  In your last deposition you testified  
18                  that officers used the N word and other  
19                  racially derogatory language. What other  
20                  words did you hear officers use that was  
21                  racially derogatory?

22                  A. Besides the N word, I don't recall really  
23                  hearing other racially derogatory language

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1 supervisors/superiors must initiate  
2 disciplinary actions. It states that whenever  
3 the level of performance falls below  
4 acceptable limits, supervisors/superior  
5 officers are responsible for initiating  
6 disciplinary action if the employee assigned  
7 to their command or temporarily assigned to  
8 their command or if substandard performance  
9 occurred in the superior's presence, correct?

10 A. That's what it says.

11 Q. Okay. Did you never initiate discipline over  
12 any of your employees?

13 A. Yes.

14 Q. Did any of those disciplinary actions involve  
15 any kind of racially bias conduct?

16 A. No.

17 Q. Okay. What kind of conduct would you initiate  
18 disciplinary proceedings under?

19 A. I charged one officer one time for failure to  
20 perform their duties.

21 Q. Okay. I believe you testified to this before,  
22 but --

23 A. I did.

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1 STATE OF NEW YORK)

2 ) ss.

3 COUNTY OF ERIE )  
4

5 I, Brooklyn Morton, Notary Public, in and for  
6 the County of Erie, State of New York, do  
7 hereby certify:

8 That the witness whose testimony appears  
9 hereinbefore was, before the commencement of  
10 their testimony, duly sworn to testify the  
11 truth, the whole truth and nothing but the  
12 truth; that said testimony was taken pursuant  
13 to notice at the time and place as herein set  
14 forth; that said testimony was taken down by me  
15 and thereafter transcribed into typewriting,  
16 and I hereby certify the foregoing testimony is  
17 a full, true and correct transcription of my  
18 shorthand notes so taken.

19 I further certify that I am neither counsel  
20 for nor related to any party to said action,  
21 nor in anyway interested in the outcome  
22 thereof.

23 IN WITNESS WHEREOF, I have hereunto  
subscribed my name and affixed my seal on this  
23rd day of July, 2022.

20 *Brooklyn Morton*

21 -----  
22 Brooklyn Morton  
23

**DEPAOLO CROSBY REPORTING SERVICES, INC.**

135 Delaware Avenue, Suite 301, Buffalo, New York 14202  
716-853-5544